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NORTH CAROLINA GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA)
) COUNTY OF MOORE
vs.)
) 18 CRS 50521-24,26
LEE MARVIN HARRIS, JR.,)
Defendant.)
_____)

STATE OF NORTH CAROLINA)
) COUNTY OF MOORE
vs.)
) 28 CRS 50515-16
CHRISTIAN TERRY,)
Defendant.)
_____)

STATE OF NORTH CAROLINA)
) COUNTY OF MOORE
vs.)
) 18 CRS 50513-14
LEE MARVIN HARRIS, SR.,)
Defendant.)
_____)

TRANSCRIPT OF BOND MODIFICATION HEARINGS
Pages 1 through 36
May 1 , 2018

Honorable JAMES M. WEBB, Judge Presiding

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Reported by: Cynthia L. Hall, RPR
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P R O C E E D I N G S

(These proceedings commenced at 11:01 a.m. on May 1, 2018. The defendants Harris, Jr. and Terry were present with their respective counsel.)

10:59:05

MR. MCSWEENEY: Your Honor please, next two matters come from, beginning on page 48, outside 128 through 132, Lee Marvin Harris Jr. He is present with his attorney Mr. Foushee. And also, Your Honor, on page 133, outside 375 and 376, Christian Terry, he is also present, as is his attorney, Mr. Costanza.

11:02:06

If Your Honor please, this is on pursuant to motions filed on behalf of both defendants to have their pretrial conditions of release addressed.

11:02:21

Your Honor, Mr. Harris, Jr., his current bond is \$9 million secured, and Mr. Terry's bond is \$5 million as set by the magistrates in both of those cases.

11:02:50

MR. FOUSHEE: I guess it's my turn. Good morning, Your Honor.

11:02:52

THE COURT: Good morning, Mr. Foushee.

11:02:52

MR. FOUSHEE: Your Honor, I have the pleasure of representing Mr. Harris, and you see what he's charged with. He's charged with a couple mid-level heroin traffickings, and I think he has a high-level cocaine trafficking, and he has the highest bond of any individual who I've ever represented

1 in my nearly 15 years doing this, and it was set at
2 \$9 million by the magistrate.

11:03:16

3 He does have some prior criminal history. I
4 think he has a handful of Class I felonies that he has been
5 convicted of. They are all convictions that stem from local
6 counties. I think he has one from Hoke, one from Moore
7 County. I think his most recent conviction may have been in
8 2016.

11:03:42

9 He is a life-long resident here in Lee County.
10 His mother is a teacher. He has a father, although his
11 father is a charged codefendant in this case, but he has been
12 around this part of the world his entire life.

11:03:55

13 I can't tell you very much about the facts of
14 the case because I have not yet received discovery, so I'm
15 not in a great position to tell you whether I think this is a
16 really strong case or not very strong case.

11:04:07

17 Everything I know about the facts as the State
18 contends them to be are from a search warrant that Your Honor
19 signed off on, and it would tend to suggest that this was an
20 ongoing investigation originating perhaps as far back of
21 February 2017, that involved some surveillance from the
22 woods, some following of vehicles where a number of
23 encounters between my client were observed that could
24 potentially be innocuous, could potentially be something
25 else, depending on the opinion of who it was observing them.

11:04:45

1 There was an allegation that on one occasion my
2 client was involved dropping a package off outside of a house
3 and law enforcement contends that contained a trafficking
4 amount of heroin. I haven't seen labs on that, and I haven't
5 seen discovery to tell you whether there was video of that,
6 photos of that, or anything else to corroborate the officer's
7 statement about what did or did not transpire.

11:05:11

8 All of that ultimately resulted in the issuance
9 of a search warrant that led to the search of a residence in
10 Southern Pines where law enforcement contends they seized
11 various and sundry contraband and a firearm that my client
12 was charged with possessing.

11:05:30

13 That is a house that -- that they allege my
14 client stayed at occasionally overnight. They also contend
15 that he spends a number of nights overnight at a girlfriend's
16 house in Charlotte, and it's true he does have a girlfriend
17 that lives down the road in Charlotte.

11:05:48

18 The mat -- the bond was set by magistrate, I
19 believe her name is Carol Wright, if I'm not mistaken. As I
20 understand it she is a former Southern Pines police officer
21 herself, and this of course was an investigation that was
22 carried out by the Southern Pines Police Department, so that
23 at least caused me to raise an eyebrow about the true
24 neutrality in the attachment of the magistrate setting that
25 bond, perhaps explains in part why it's so extraordinarily

1 high.

11:06:22

2 There were written findings made about the bond
3 that says that, you know, my client on occasion travels to
4 Florida and South Carolina, which I would say isn't terribly
5 remarkable for any person who lives in this part of the world
6 to, on occasion to travel to those neighboring states, one of
7 which is a popular vacation destination, and says he has
8 arrests in neighboring counties.

11:06:53

9 There is some suggestion this case may be
10 adopted federally. I have no earthly idea whether that will
11 happen or not. It has not happened yet. And that this case
12 is old, and it concludes with that my client is opined to be
13 a danger to society, although I will point out that, you
14 know, at least as far back as February of 2017 law
15 enforcement was observing behavior that they at least opined
16 was criminal activity and chose not to take any action to
17 intervene for the better part of a year, which would at least
18 be some suggestion that they didn't think Mr. Harris was
19 going anywhere, that he must not be too imminently dangerous
20 to anyone, since nothing happened until they got this warrant
21 a year later.

11:07:46

22 So while I understand he has some prior
23 criminal history, you know, I am not -- plenty aware of
24 problems, you know, controlled substances cause in our
25 society, and the many, many people they affect, a bond of

1 \$9 million in a drug case does seem beyond the pale, and I
2 would respectfully suggest a bond of \$250,000 secured will be
3 adequate to secure his attendance at trial.

11:08:12

4 Thank you very much.

11:08:15

5 THE COURT: Mr. Costanza?

11:08:17

6 MR. CONSTANZA: Judge, it's somewhat difficult for
7 me to -- to effectively argue a bond reduction motion in this
8 case in that I don't have discovery. The State, I assume,
9 has assembled at this point, so I'm not able to give Your
10 Honor a really good forecast of the strength or weaknesses of
11 the State's case against Mr. Terry, who is charged with
12 trafficking by possession, level two trafficking, PWISD
13 cocaine, maintaining a dwelling, and then possession of
14 cocaine within a thousand feet of a primary school.

11:08:56

15 Your Honor, his bond is \$5 million. My
16 understanding of the strength or weakness of the evidence
17 against Mr. Terry at this time is that he was present when a
18 house in Southern Pines was searched by the police. I
19 believe he was getting a shower at the time the police made
20 entrance in the house, kicked the door down, whatever --
21 whatever means they used to gain entry, and was just stepping
22 out of the shower drying off at the time they ran in and
23 caused him to be prone on the floor and taken into custody.

11:09:35

24 He obviously didn't have any controlled
25 substances directly on his person at that time. House was

1 searched. There were other people present at the house when
2 it was searched. And there was, I believe, according to the
3 warrant, 279 grams of cocaine that was recovered, not in his
4 actual possession.

11:09:56

5 Mr. Terry does not live at that location, has
6 never lived at that location. The search warrant that Your
7 Honor signed, I've gone through the search warrant. It seems
8 to me that Mr. Terry is not mentioned that much, if at all,
9 in the search warrant. I can stand to be corrected on that.
10 There is a very brief mention of the house where he was --
11 where he was located being one of the houses of interest in
12 the police department.

11:10:29

13 One thing I always think is interesting when
14 the magistrate fills out a factor sheet when they set a
15 secured bond, certain things that are supposed to be
16 mentioned on the factor sheet, one is the defendant's family
17 ties, employment, character, degree of intoxication, or
18 mental conditions, somebody wrote "unknown," with regarding,
19 you know, this gentleman if he has family ties in this area.
20 Then it goes on to says, states he lives with his mother in
21 Southern Pines.

11:11:03

22 It would be very easy to determine if this guy
23 lived in Southern Pines, if he has family that lives in
24 Southern Pines, defendant's length of residence, and other
25 ties to the community, unknown.

11:11:15

1 Well, what does it say on his driver's license?
2 Where did he go to school? Did he go to high school here?
3 Did he go to elementary school? Primary school? That's very
4 easy to determine. History of flight or failure to appear,
5 and then somebody wrote, "none."

11:11:34

6 So if he had failed to appear, again, that's
7 very easy for the police or the magistrate's office to
8 determine, they pull up his criminal record to see if there's
9 been prior offenses that have been issued.

11:11:47

10 I would contend in this case if this factor
11 sheet was filled out accurately that this man is from Moore
12 County, his family lives in Moore County, he has three
13 children ages ten, nine and eight that live here in this
14 area, he shows up in court when he's expected to appear in
15 court, a \$5 million bond, Your Honor, I would contend for
16 what he is accused of is -- is beyond the pale. It's a Class
17 F felony.

11:12:26

18 The guidelines that Your Honor, along with
19 former Chief Judge William Neely adopted for our judicial
20 district back in 2003 indicates for a Class F felony the
21 suggested range is 2500 to \$15,000.

11:12:47

22 You know, I'm not going to say Mr. Terry's
23 never had to appear in court, that he was on probation at the
24 time he was arrested in this case, so I'm not -- that is
25 certainly a factor Your Honor can take into account, but I

1 would ask Your Honor to set a bond that is consistent with
2 the guidelines that you and Judge Neely adopted for our
3 district some 15 years.

11:13:12 4 If they had any question or concern if he was a
5 resident of Moore County, if he had ties to the community,
6 they could -- well, he's on probation here in Moore County,
7 they could check with his probation officer and provided that
8 information to the magistrate when his bond of \$5 million was
9 assessed.

11:13:30 10 I would also say, again, it is -- he's put --
11 I'm in somewhat of an untenable position arguing the strength
12 or weakness of the evidence in this case when we haven't been
13 provided discovery.

11:13:44 14 So we would ask Your Honor to modify
15 Mr. Terry's bond accordingly.

11:13:49 16 MR. MCSWEENEY: Your Honor please, the State would
17 ask that the bonds remain the same. As far as dealing with
18 Mr. Harris, Jr., prior criminal history, the State would
19 contend he's a level three for felony sentencing, with
20 convictions in 2007 here in Moore County possession of drug
21 paraphernalia; 2009, a conviction of possession of cocaine
22 here in Moore County; 2009 also in Guilford County a class
23 one conviction for misdemeanor possession of marijuana; 2010
24 a felony possession of marijuana in Hoke County; and a
25 April 11th, 2016 conviction here in Moore County for

1 possession of cocaine, along with a resisting a public
2 officer in 2007 in Moore County.

11:14:36

3 As it relates to Mr. Terry and his prior
4 history, Your Honor, State would contend he would also be, or
5 he would be a level three for felony sentencing. As
6 Mr. Costanza referenced, he was on probation for a sale of
7 cocaine. He was convicted on September 6th of 2016, for two
8 counts of selling cocaine, one count of possession of stolen
9 firearm, possession with intent to sell and deliver
10 marijuana, and possession with intent to sell and deliver
11 cocaine.

11:15:08

12 Prior to that, Your Honor, 2008 conviction in
13 Moore County of misdemeanor maintaining a place for the
14 keeping or storing of controlled substance; 2014, March of
15 '14, convictions in Moore County of misdemeanors, assault on
16 a government official, carrying a concealed gun, resisting a
17 public officer and communicating threats; and also in that
18 same year, 2014, a conviction for injury to real property,
19 and again, he was -- Mr. Terry was on probation at the time
20 of these offenses.

11:15:43

21 Your Honor, Investigator Shawn Lowery and
22 Investigator Jason Perry are present, as well as Chief Bob
23 Temme of the Southern Pines Police Department.

11:15:53

24 As Mr. Foushee referenced going back to
25 February of last year I became involved with that

1 investigation that lasted, well, at least a year and then
2 some, Your Honor. There were multiple orders signed allowing
3 for surveillance to be conducted on these individuals.

11:16:11

4 I will tell the Court that there are at
5 least -- there are five codefendants in Moore County.
6 Mr. Harris, Sr., Lamar Seally, Lisa Hanani. Your Honor,
7 there are two other, I say codefendants or two other related
8 defendants, a Calvin Fox out of Lee County, and the name just
9 escaped me out of Davie County.

11:16:41

10 I will get that name at the end of my
11 presentation.

11:16:43

12 Your Honor, this stretch between Moore County,
13 Charlotte, Davie County, Sanford, as part of the
14 investigation where the officers in the Southern Pines Police
15 Department for the better part of a year had visual
16 surveillance on multiple residence where these individuals,
17 including the defendant and Mr. Terry had set up basically a
18 drug business and were selling drugs out of a particular
19 residence.

11:17:10

20 One of the residence mentioned was on New York
21 Avenue where officers witnessed Mr. Harris leave from a
22 storage building in Aberdeen, go to that residence, which, on
23 New York Avenue, which he had no lawful ownership or
24 possessory interest to, where he and the other codefendants
25 had essentially set up at a location where they had been

1 selling controlled substances.

11:17:36

2 And the officers observed the defendant place a
3 bag down on the ground. They went and retrieved that bag and
4 it turned out to be heroin, a trafficking amount of heroin
5 that the defendant had.

11:17:46

6 All of that led up to there was multiple visual
7 surveillance on the habits and patterns of these defendants
8 as far as a pattern of leaving one particular residence,
9 going to a storage unit, driving up to Randolph County to
10 meet the other codefendant who lives in Davie County, going
11 down to Lee County, then back down to Southern Pines.

11:18:09

12 On the day in question, on February 20th, 2018,
13 again officers had visual surveillance. They had a very good
14 understanding of where everything was. They had a search
15 warrant ready for a residence on West Indiana Avenue in
16 Southern Pines. They observed the -- Mr. Harris, Jr. do his
17 normal course of business, go to the storage unit, drive up
18 to Randolph County, go to Lee County in Sanford, and then
19 back down to the house on West Indiana Avenue. He was in a
20 2009 Toyota Venza. When he got out of that car the search
21 warrant was executed. During a search of the, where
22 Mr. Harris, Jr., Mr. Terry was seized from a bedroom inside
23 the residence, and during a search of the -- of the Toyota
24 Venza, approximately 228 grams --

11:19:09

25 THE COURT: Say again --

11:19:09 1 MR. MCSWEENEY: -- 228 grams of cocaine, Your Honor,
2 that would be the level two amount which is a mandatory
3 minimum 70 to 93 months with a \$100,000 fine.

11:19:22 4 Your Honor, there was approximately \$4,400
5 seized from the center console of the Toyota Venza that the
6 defendant was just seen getting out of.

11:19:35 7 Your Honor, during a search of the residence at
8 West Indiana Avenue as it relates to Mr. Terry, the defendant
9 was located in a bedroom in there. Mr. Terry's wallet and
10 driver's license were located in there. He had approximately
11 \$331.

11:19:51 12 There was a pair of shorts that were located in
13 the bedroom, and inside the shorts pocket was a plastic bag
14 which contained an additional 279 grams of cocaine. Again,
15 Your Honor, that would be the Class F amount, 70 to 93 months
16 would be the mandatory minimum/maximum sentence at that time.

11:20:18 17 There was a laundry detergent bottle that was
18 found to contain 4,000 -- excuse me \$496.34. There was a
19 prescription bottle that had Mr. Terry's name on it that was
20 also found in that bedroom. So the State contended that
21 Mr. Terry did actually reside there and had been staying at
22 that residence located at 1090 West Indiana for sometime.

11:20:50 23 Your Honor, almost simultaneously there was
24 also a third codefendant at that location, Mr. Lamar Seally.
25 He was also located there. He was arrested at that location.

11:21:05

1 The officers with the Southern Pines Police
2 Department also almost simultaneously with the assistance of
3 other jurisdictions in Moore County executed a search warrant
4 at 803 North Sycamore Street located in Aberdeen. That was
5 purported to be the residence where Lee Marvin Harris, Sr.
6 primarily resided. The State would also contend that the
7 codefendant, Mr. Lee Marvin Harris, Jr., also stayed there.
8 There was a Cadillac that was in the residence that the keys
9 to that vehicle belonged to Lee Marvin Harris, Sr. There was
10 a gray car cover over it. During a search of the interior of
11 that car, Your Honor, behind the rear armrest was
12 approximately 88 grams of cocaine. That would be the Class G
13 level which would be a 35 to 51 months, and there was also an
14 additional 13 grams. The 88 grams was powder, Your Honor,
15 and approximately 13 grams of crack. There was a handgun
16 located in the bedroom the State would contend would be
17 attributed to the codefendant, Mr. Lee Marvin Harris, Jr.
18 The defendant's driver's license was there and other
19 documents that contained his name.

11:22:30

20 In the closet of that bedroom, Your Honor,
21 there was a Springfield XD .40 handgun was located.
22 Mr. Harris, Sr. was present at that location. He was read
23 his rights, waived his rights, began telling the officer
24 Mr. Harris, Sr., who you'll hear from after this case, did
25 not have a record. There were some handguns. Additionally

1 from the .40 caliber that was located in the codefendant
2 Mr. Harris, Jr.'s bedroom there were several other firearms
3 located inside the residence which Mr. Harris, Sr. did inform
4 law enforcement officers of that. He did not inform the
5 officers about the .40 caliber that was found in his son's
6 bedroom.

11:23:16

7 Your Honor, a third location that was also
8 searched pursuant to a search warrant issued by, I believe,
9 Your Honor, by a judicial official, was a storage building
10 located on Highway 15/501 in Aberdeen. This was the same
11 storage building that defendant, Mr. Harris, had been seen
12 frequently going to and going inside, coming outside, and the
13 officers would contend based on their surveillance that he
14 appeared to be picking up some items and dropping off some
15 items, and his clothing would change, and the appearance of
16 his clothing would change as if to indicate he put something
17 of relatively substantial size in his pockets and go to some
18 of the other locations that I talked about.

11:24:11

19 But during a search of that storage building,
20 Your Honor, there was a plastic bag of cocaine was located
21 which contained approximately two ounces of cocaine, which
22 would be yet another mandatory 35 to 51 month sentence
23 against Mr. Harris, Jr.

11:24:33

24 Your Honor, the investigation on February 20th
25 also led to a search of a residence in Charlotte where a

1 small amount of cash was located. That would be the
2 residence that has been referenced to belonging to Ms. Lisa
3 Hanani, who is the purported girlfriend of Mr. Harris, Jr.

11:24:55

4 Items were also located in Lee County at a
5 residence in Sanford, Mr. Calvin Fox. He is facing multiple
6 drug charges there.

11:25:04

7 Based on observation and surveillance that the
8 officers had as they were going to Asheboro to meet -- where
9 Mr. Harris, Jr. was going to meet an individual from Davie
10 County, officers arrested that individual and multiple kilos,
11 I don't have the exact amount in front of me, Your Honor, for
12 those multiple kilos of cocaine were located at that
13 residence, Your Honor. So he is facing charges there.

11:25:29

14 As has been referenced, other jurisdictions
15 outside of the state of North Carolina expressed an interest
16 in this matter. I have not been given the green light or
17 the -- informed that the feds have adopted this case. I feel
18 fairly certain that they will, and hopefully within the next
19 30 days we'll have an idea of which cases and which
20 defendants.

11:25:55

21 So at this time the State would ask that the
22 bond remain the same. I have not provided discovery yet.
23 There is at least 720 pages of documents, and I'm sure many
24 more than that that have been submitted to us. There is more
25 terabytes, or I'm not sure the exact technology word as far

1 as describe the amounts of surveillance footage that the
2 Southern Pines Police Department has in this case. The
3 untold number of man-hours, so I have not had an opportunity
4 to go through every piece and second of it, so the discovery
5 has not been provided to.

11:26:35

6 Once I have a clearer idea of the direction of
7 where these charges are, either remaining in my jurisdiction,
8 which I would have absolutely no problem with them staying
9 here, but if the feds see fit to adopt them then we will
10 fully cooperate with them, but we would ask Your Honor to
11 keep the bond -- bond the same.

11:26:58

12 Don't wish to be heard any further, Your Honor.

11:27:00

13 THE COURT: We're going to take our morning recess
14 of 15 minutes, after which we will, the Court will then hear
15 the bond motion on Lee Marvin Harris, Sr., and at that time
16 the Court will rule on all three of these bond motions.

11:27:15

17 Court's in recess for 15 minutes.

11:27:17

18 (Recess from 11:27 a.m. 11:59 a.m.)

11:27:17

19 (Defendant Harris, Sr. present with his
20 counsel.)

11:59:09

21 MR. MCSWEENEY: Your Honor please, next is the
22 matter on page 50, outside 133, 134, Lee Marvin Harris, Sr.
23 He is present with his attorney, Mr. Brownback. And again,
24 this is kind of a continuation or a supplement to the bond
25 hearing involving his codefendants.

11:59:27 1 Mr. Harris, Sr.'s bond is set at the amount of
2 \$5 million, secured.

11:59:40 3 THE COURT: Mr. Brownback?

11:59:42 4 MR. BROWNBAC: Thank you, Your Honor. Your Honor,
5 that's correct, \$5 million bond. Been incarcerated since
6 February 20th. Judge, he's 58 years old. He doesn't have
7 any prior criminal convictions at all. At all. He's a
8 disabled veteran. He served in the United States Army for
9 about eight years. He was also a corrections officer. He's
10 retired. He lives in Aberdeen at 803 Sycamore Street, North
11 Sycamore Street with his wife, Valerie. Ms. Valerie, she's
12 present raising her hand. That's his daughter Varlusha.
13 That's his brother Stanley. So he's got family and ties to
14 this community. He's been in Moore County since 1975, Judge.
15 Before that he was in Hoke County because he was born in Hoke
16 County. 1975 he met Ms. Valerie and they were married in
17 1980.

12:00:35 18 Judge, he's a pastor, ministers to people, and
19 as I stated previously, he's got no record whatsoever.

12:00:43 20 He had ties to this community that go back
21 decades. Your Honor's already heard a few arguments from
22 other counsel, and already heard about this search warrant
23 that was executed.

12:00:56 24 Your Honor, in this search warrant, this search
25 warrant that was obtained, he's not mentioned in it. The

1 residence, Mr. Harris' residence at 803 North Sycamore Street
2 is mentioned about two times in that search warrant. First,
3 paragraph 10, where it says on January the 29th surveillance
4 was being conducted at 803 North Sycamore Street in Aberdeen
5 where they were surveilling Lee Marvin Harris, Jr., a
6 codefendant and what vehicle he had.

12:01:31

7 Then, paragraph 15 of the search warrant,
8 Judge, the law enforcement says that the affiant's been able
9 to determine that Lee Marvin Harris, Jr. resides at 803 North
10 Sycamore Street, residence of Lee Marvin Harris, Sr. The
11 applicant has been able to confirm this through -- that is --

12:01:53

12 THE COURT: What paragraph you reading?

12:01:54

13 MR. BROWBACK: Fifteen, Judge. And that they're
14 able to confirm that he resides there because he resides at
15 the location during the majority of night hours which
16 indicates a time when most people sleep. That is the
17 indications for 803 North Sycamore Street.

12:02:11

18 Now, you heard about the surveillance being
19 conducted in Aberdeen, at the storage lockers, at the
20 residence in Southern Pines. No where did you hear that Lee
21 Marvin Harris, Sr. was surveilled. There's no indication
22 anywhere that he was a part of this case besides the fact, in
23 the parenthesis, residence of Lee Marvin Harris, Sr. in
24 paragraph 15.

12:02:40

25 They did not surveille him in any of the

1 vehicles that they tracked from hither to -- from hither to
2 yon. They didn't observe him dropping any suspicious
3 packages. They didn't observe him at all and found it not
4 necessary to include any of his actions in the search
5 warrant. Nothing. I think that's rather telling, Your
6 Honor.

12:03:02

7 And Lee Marvin Harris, Jr., that's his son, so
8 also in the search warrant there wasn't any indication that
9 there was any alleged illegal activities going on at Lee
10 Marvin Harris', Sr.'s, home. There were no drug transactions
11 going on. There were no drops. There were no buys. There
12 was nothing. It didn't say that they saw Lee Marvin Harris,
13 Sr. walking out, finding drugs, or secreting drugs. He's not
14 mentioned at all.

12:03:34

15 This -- the written determination of the
16 judicial official, Lee Marvin Harris, Sr. has involvement
17 based on investigation with Mexican drug cartels, well, there
18 wasn't any indication of any Mexico drug cartel at 803 North
19 Sycamore Street. There wasn't any indication that Lee Marvin
20 Harris, Sr. had involvement with any of the other
21 codefendants.

12:04:01

22 Judge, Your Honor can read the determination,
23 but lives in Aberdeen but has drug connections in Charlotte
24 and others, and other remote areas based on the
25 investigation. No where based on the information that we've

1 received was Lee Marvin Harris, Sr. surveilled leaving his
2 house. Not -- not driving to Charlotte, not driving to any
3 other community. They didn't surveille him. They observe
4 him. They didn't observe what he was doing because he wasn't
5 a focus of the investigation.

12:04:34

6 Length of residence, you heard this before
7 unknown. Well, they could have asked. Defendant's record of
8 convictions, none. And NCAware found other charges, pending
9 arrest, but they looked, there's no other convictions.
10 History of flight, none, but defendant is aware of other
11 pending cases and believed to be a flight risk. He's a
12 58-year-old man who's a pastor, who's retired, lived in
13 Aberdeen, was swept up in this investigation, who's just been
14 wanting to know what's been going on.

12:05:07

15 Your Honor, we're operating, all the defense
16 counsel in this case are operating with a severe derth of
17 information of he was arrested February the 20th.
18 February 20th. Been in jail since then. The only
19 information I have is this warrant, nothing else. No
20 discovery, no nothing but the search warrant is what
21 everything was based on, and the search warrant doesn't
22 implicate my client whatsoever. Whatsoever. Besides the
23 fact that he resides there and besides the fact that he is a
24 codefendant's father.

12:05:39

25 Your Honor, we'd ask you to find that that

1 \$5 million bail is extremely extensive and set it to
2 something more reasonable, and reduce it by as much as the
3 Court would consider. Thank you.

12:05:56

4 MR. MCSWEENEY: Your Honor please, the State would
5 ask the Court to kind of adopt everything I argued on behalf
6 Mr. --

12:06:05

7 THE COURT: Thing about that --

12:06:06

8 MR. MCSWEENEY: I understand.

12:06:06

9 THE COURT: -- is this defendant did not hear what
10 you said.

12:06:09

11 MR. MCSWEENEY: He was not in here, that's correct,
12 Your Honor. I will just, again, Your Honor, going back to
13 February of last year, even kind of a little before that
14 February of '17 I became involved with this investigation,
15 that this, the Southern Pines Police Department started up
16 involving all these defendants. They conducted surveillance
17 on multiple residences throughout primarily Southern Pines,
18 West New York Avenue, West Indiana Avenue.

12:06:39

19 This defendant was seen at least two different
20 residence where narcotics had been sold, was present during
21 those -- the times when others were involved.

12:06:51

22 Ultimately, Your Honor, the investigation, and
23 there was a lot of visual surveillance based on orders signed
24 by various courts tracking the multiple codefendants in this
25 case, all led up to the execution of multiple warrants on

1 February 20th of this year.

12:07:09

2 As it relates to this defendant, Your Honor, a
3 residence at 803 North Sycamore Street in Aberdeen where the
4 defendant lived, the State would contend in addition to where
5 the defendant lived, where his son stayed occasionally, Lee
6 Marvin Harris, Jr., when officers executed the search warrant
7 at that residence, this defendant was there on February 20th.
8 He had keys in his possession to a Cadillac that was in the
9 vehicle that was in the yard.

12:07:39

10 THE COURT: Talking about this defendant?

12:07:41

11 MR. MCSWEENEY: This defendant, yes, sir. There was
12 a Cadillac that was located at that residence. When they
13 searched the inside of the -- of that vehicle, Your Honor,
14 they found over 200 -- excuse me, between 28 and 200 grams of
15 cocaine, I believe approximately two ounces of cocaine. I
16 believe it was 88 grams of powder cocaine.

12:08:08

17 THE COURT: Who was that vehicle registered to?

12:08:10

18 MR. MCSWEENEY: It was registered to this defendant
19 and the keys to that Cadillac were inside the residence.
20 Officers had surveillance prior to February 20th that had the
21 defendant driving that vehicle, was inside that vehicle.
22 There was a gray cover over the vehicle, but it was, the
23 State would contend it was in -- was in use and operation,
24 was utilized by this defendant to traffic cocaine, just as he
25 was charged.

12:08:33

1 When he was -- there was also some cash that
2 was located inside -- actually, Your Honor, as far as other
3 items of contraband, there was the cocaine located inside the
4 car, set of digital scales. The defendant, when first
5 encountered by law enforcement, did advise the officers that
6 he had a handgun under his mattress, several other long guns.
7 I think two to three other guns were located in the closet
8 attributed to this defendant.

12:09:15

9 Those items were located. They were not seized
10 by law enforcement. As Mr. Brownback referenced, the
11 defendant has no criminal record, no convictions, so he was
12 not prohibited from possessing firearms. There was, however,
13 located in a bedroom where the defendant's son occasionally
14 would lay his head from time to time they found a handgun in
15 there in the closet. A .40 caliber Springfield was located
16 there.

12:09:47

17 There was a search warrant was executed in a
18 storage unit off of 15/501 in Aberdeen where, during the
19 course of the investigation, the State would contend that the
20 primarily -- the codefendant, Mr. Lee Marvin Harris, Jr.
21 would either travel from the residence on Sycamore Street, go
22 to the storage unit, back to the residence on Sycamore
23 Street, and then travel to either Asheboro or other counties.
24 The State would contend that after leaving the storage unit a
25 lot of time would go back by this residence on Sycamore

1 after.

12:10:22 2 THE COURT: The defendant's residence?

12:10:23 3 MR. MCSWEENEY: Not all the times, but again, during
4 the whole 12, 13, 14 months of this investigation, there
5 would be evidence the State contends that had this house
6 being a hub, one of many hubs in this case, where narcotics
7 were coming in and out, for everybody, everybody to know
8 about.

12:10:42 9 The defendant was at, again, at least one
10 address where multiple sales of narcotics were witnessed, due
11 to surveillance. There are charges where an individual has
12 been indicted for selling narcotics out of a house at New
13 York Avenue. Mr. Lamar Seally, who is the -- who was the
14 third codefendant that was arrested at the residence at West
15 Indiana Avenue, which is where the third search warrant was
16 executed where Mr. Lee Marvin Harris, Jr., Christian Terry
17 and Lamar Seally were all located.

12:11:20 18 Various levels of cocaine located in the
19 vehicle that Mr. Lee Marvin Harris, Jr. had been seen driving
20 from that day from the storage unit to this defendant's house
21 up to Raleigh -- excuse me, Randolph County, Sanford, and
22 then back to West Indiana Avenue, the State would contend
23 that the history and the pattern that was involved in this --
24 in this enterprise definitely had Mr. Harris, Sr. very much
25 involved in knowing about what was going on.

12:11:50

1 Trafficking amounts of cocaine were located
2 inside the defendant's, or the codefendant's vehicle at West
3 Indiana Avenue. There was trafficking amounts of cocaine
4 located in the shorts, the State would contend, belonged to
5 Mr. Christian Terry that also contained were his driver's
6 license and prescriptions that were issued to Mr. Terry were
7 located in the room that he stayed at at West Indiana Avenue.

12:12:17

8 The -- as -- well, the third area that was
9 searched on February 20th of 2008 [sic], the storage unit on
10 15/501 in Aberdeen, approximately two ounces of cocaine were
11 located there. Again, that was a storage building that was
12 witnessed numerous times by law enforcement, again, primarily
13 the codefendant, Mr. Lee Marvin Harris, Jr., this defendant's
14 son, would travel back and forth from the residence on
15 Sycamore Street to the -- to the storage unit, and as the
16 State argued before, would pick up a lot of controlled
17 substances and then travel to either his dad's house or up to
18 Randolph County and then ultimately to Lee County.

12:13:00

19 Again, there were five individuals charged in
20 Moore County with these offenses. In addition to what I've
21 mentioned to a Miss Lisa Hanani, who was the reported
22 girlfriend of Lee Marvin Harris, Jr., she was arrested, she
23 lived in Charlotte, a warrant was executed at her residence.

12:13:21

24 Additionally charges were brought forth in Lee
25 County. Mr. Calvin Fox, who the State would contend,

1 defendant, codefendant Mr. Harris, Jr. had delivered a
2 quantity of cocaine and/or heroin to his residence after
3 going to Randolph County where he met an individual who was
4 subsequently charged, and that individual's name was a
5 Mr. Gonzalo Gomez. He was the individual that in Davie
6 County when he was arrested by law enforcement based on the
7 observations and the dealings that he had with Mr. Harris,
8 Jr. They searched his residence and multiple kilos of
9 cocaine were located at his residence.

12:14:04

10 So the State would contend this is an ongoing
11 investigation as far as the discovery being provided to my
12 office and to me. As I mentioned with Mr. Harris, Jr., and
13 Mr. Terry, the federal government is considering adopting
14 this case and bringing out charges. I would anticipate
15 within the next 30, 45 days there will be some clear guidance
16 as far as a direction of who will be prosecuting this case,
17 whether it's on the state level or the federal level.

12:14:39

18 Would ask Your Honor to keep the bond in
19 effects. Again, just for purposes of the record,
20 investigators Shawn Lowery, Jason Perry are here with the
21 Southern Pines Police Department, as well as Chief Bob Temme,
22 Southern Pines Police Department. We just ask Your Honor to
23 keep all their bonds the same, would object to any
24 modification.

12:15:03

25 Thank you, Your Honor. Nothing further.

12:15:07 1 THE COURT: Anything further, Mr. Brownback?

12:15:09 2 MR. BROWNBAC: Well, Your Honor, I mean, we
3 heard --

12:15:11 4 THE COURT: First of all, let me ask you, do you
5 desire to call any officers that are here in this case?

12:15:16 6 MR. BROWNBAC: I don't, Judge.

12:15:17 7 THE COURT: Go ahead.

12:15:18 8 MR. BROWNBAC: We hear that the Sycamore Street
9 address is a hub of drug activity, but we don't -- couldn't
10 see anything that law enforcement felt was sufficient against
11 my client to put in a search warrant to search his residence.
12 It wasn't a hub. It -- the limited, extremely limited
13 information that we've received right now, it doesn't suggest
14 nor does arguments of the district attorney suggest that
15 Mr. Harris, Lee Marvin Harris, Sr. was involved in any way.

12:15:53 16 There's nothing -- law enforcement took their
17 reasons, the best reasons that they possibly had to apply for
18 a search warrant of this man's home.

12:16:03 19 And that was their best shot, probable cause,
20 here we go. We need to search this man's home. They did.

12:16:09 21 It doesn't matter if he has a lawful firearm in
22 his residence. Doesn't matter anything. What matters he was
23 just in his residence, and since then he's been under a
24 \$5 million punitive bond, which isn't supported by what
25 limited information that we have.

12:16:25 1 THE COURT: All right. Detective Perry, if you'd
2 come around and be sworn.

12:16:29 3 (Oath administered by the clerk.)

4 **JASON PERRY**, being first duly sworn, gave answers to **THE**
5 **COURT** as follows:

12:16:55 6 THE COURT: State for the record your name.

12:16:56 7 THE WITNESS: Detective Jason Perry.

12:16:58 8 THE COURT: Occupation?

12:16:59 9 THE WITNESS: I'm a detective with the Southern
10 Pines Police Department.

12:17:03 11 THE COURT: What evidence does the State have
12 against this defendant in the light most favorable to the
13 State?

12:17:11 14 THE WITNESS: Repeat that, please?

12:17:13 15 THE COURT: What evidence is there against this
16 defendant to support the indictment for the offenses of
17 trafficking in cocaine by possessing 28 grams or more but
18 less than 200 grams, maintaining a vehicle for controlled
19 substances, possession of drug paraphernalia, possession with
20 intent to sell and deliver cocaine, in the light most
21 favorable to the State. What evidence have you all gathered
22 against this defendant?

12:17:44 23 THE WITNESS: Basically having in his possession and
24 control is a vehicle that was registered to him, along with
25 the vehicle keys, in which the cocaine was found.

12:17:57 1 THE COURT: There's been some mention about a cover.
2 Was that vehicle covered with a car cover?

12:18:01 3 THE WITNESS: Upon our arrival it was covered, yes,
4 sir.

12:18:03 5 THE COURT: And do you have an opinion as to the
6 purpose of that cover?

12:18:07 7 THE WITNESS: My opinion would be to keep it clean.
8 I have no idea the reason behind it, but typically a car
9 cover is put on to keep the vehicle clean.

12:18:18 10 THE COURT: Was the vehicle registered?

12:18:20 11 THE WITNESS: Yes.

12:18:22 12 THE COURT: Was the vehicle operative?

12:18:23 13 THE WITNESS: Not to my knowledge.

12:18:27 14 THE COURT: And what's the basis of that answer?

12:18:31 15 THE WITNESS: My understanding is the vehicle did
16 not even have a battery installed in it so it was not
17 operable.

12:18:38 18 THE COURT: Do you know who all had access to that
19 vehicle in addition to this defendant?

12:18:45 20 THE WITNESS: Well, the keys to the vehicle were
21 inside Mr. Senior's bedroom at the same time, so anybody that
22 had access to the keys would have access to the vehicle.

12:19:02 23 THE COURT: When you executed the search warrant was
24 the vehicle locked or unlocked?

12:19:05 25 THE WITNESS: The front driver door was unlocked. I

1 believe all the other doors were locked.

12:19:13 2 THE COURT: Even though you say the vehicle was not
3 operable, because at least didn't have a battery in it, it
4 still had a valid registration on it?

12:19:21 5 THE WITNESS: Yes, sir.

12:19:24 6 THE COURT: Either side have any questions?

12:19:26 7 MR. BROWNBAC: No, Your Honor.

12:19:27 8 MR. MCSWEENEY: No questions, Judge.

12:19:28 9 THE COURT: Thank you. You may step down. Anything
10 further by either side.

12:19:41 11 MR. BROWNBAC: No, sir.

12:19:42 12 MR. MCSWEENEY: No, Your Honor.

12:21:34 13 THE COURT: Can your client make any bond,
14 Mr. Brownback?

12:21:51 15 MR. BROWNBAC: He does own that residence, Your
16 Honor. That's the only major asset that he has, and I don't
17 believe that he has any significant savings or other cash on
18 hand.

12:22:09 19 THE COURT: Do you have any evidence of other
20 persons that had access to that vehicle?

12:22:14 21 MR. BROWNBAC: The codefendant who rested his head
22 there at the house.

12:22:19 23 THE COURT: His son?

12:22:20 24 MR. BROWNBAC: Yes, sir, and I -- I believe that
25 the vehicle was located at the rear of the property. I'm not

1 sure, I haven't seen any pictures, but I don't believe that
2 the vehicle was in a carport right next to the house or
3 anything.

12:22:55

4 THE COURT: All right. With respect to Lee Marvin
5 Harris Jr., Mr. Foushee, Court will modify that defendant's
6 bond, require him to post a \$2 million secured bond on the
7 condition he is to abide by pretrial electronic house arrest.

12:23:16

8 MR. FOUSHEE: Thank you, Your Honor.

12:23:16

9 THE COURT: Administered by a bondsman, or should
10 the sheriff reinstate that program of Moore County. And he
11 is to have no contact with the codefendants.

12:23:29

12 MR. FOUSHEE: That's to include his father as well?

12:23:33

13 THE COURT: Correct.

12:23:34

14 MR. FOUSHEE: Yes, sir.

12:23:35

15 THE COURT: With respect to Christian Terry, he may
16 be released upon the posting of a \$2 million secured bond,
17 also abide by pretrial electronic house arrest, and no
18 contact with the codefendants.

12:23:51

19 MR. CONSTANZA: Thank you, Judge.

12:23:56

20 THE COURT: With respect to Lee Marvin Harris, Sr.,
21 he may be released upon the posting of a \$500,000 secured
22 bond, and he's to have no contact with the codefendants.

12:24:12

23 And Mr. Brownback, that's without prejudice as
24 the evidence develops to renew your motion for further bond
25 modification.

12:24:21 1 MR. BROWBACK: Yes, sir. Thank you.

12:24:22 2 THE COURT: Anything further by either side?

12:24:25 3 MR. BROWBACK: No, Your Honor.

12:24:27 4 MR. MCSWEENEY: No, Your Honor. Just ask all three
5 of these codefendants, their matters get set to the July 9th
6 session.

12:24:33 7 THE COURT: July 9th. Is there, I understand, I
8 assume all three of them being held in the holding cell. Is
9 there any issue with these three defendants being held where
10 they have access to one another in the Moore County detention
11 center?

12:24:54 12 MR. MCSWEENEY: Your Honor, I have not inquired to
13 see if the jail is keeping them separate. I would ask that
14 they be housed in separate units, or have minimal contact;
15 however, the jail, I didn't know how the pods are all set up,
16 but I would ask all efforts be taken where they have no
17 contact.

12:25:16 18 THE COURT: So ordered.

12:25:18 19 MR. MCSWEENEY: Thank you.

12:25:19 20 MR. FOUSHEE: Could I just inquire when can we
21 expect to receive discovery in this case?

12:25:25 22 MR. MCSWEENEY: As soon as I can calculate it all
23 and put it in a format that I can deliver it. I would like
24 to speak with the U.S. attorney's office prior to releasing
25 discovery, but I will use every best effort to get that out

1 in a timely fashion.

12:25:53

2 MR. CONSTANZA: Thank you.

12:25:53

3 (Proceedings concluded at 12:25 p.m.)

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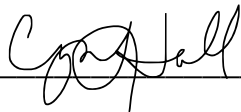
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CERTIFICATION OF TRANSCRIPT

This is to certify that the foregoing transcript of proceedings taken at the May 1, 2018 Session of the Moore County Superior Court is a true and accurate transcript of the proceedings taken by me and transcribed by me. I further certify that I am not related to any party or attorney, nor do I have any interest whatsoever in the outcome of this action.

This the 30th day of September, 2018.



CYNTHIA L. HALL, RPR
Official Court Reporter 19D